

December 17, 2007

In the matter of:
Orchard Coal Company
Orchard Slope
ID No. 36-08346

Petition for Modification

Docket No. M-2006-030-C

PROPOSED ORDER OF DISMISSAL

On May 18, 2006, Orchard Coal Company filed a petition pursuant to 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. § 811(c), and 30 C.F.R. § 44 *et seq.*, for the modification of the application of 30 C.F.R. § 75.1714-2(c), a mandatory safety standard.

The petitioner requests modification of 30 C.F.R. § 75.1714-2(c), as it applies to underground anthracite mines, to allow the storage of self-contained self-rescuers (SCSRs) within 200 feet of the working face.

MSHA conducted an investigation of the petitioned mine and found the mine operator had not applied for a SCSR storage plan under 30 C.F.R. § 75.1714-2(e), which allows the District Manager to approve the storage of SCSRs under specified conditions. The requirement of the standard states in pertinent part as follows:

30 C.F.R. § 75.1714-2 Self-rescue devices; use and location requirements.

- (a) Self-rescue devices shall be used and located as prescribed in paragraphs (b) through (f) of this section.
- (b) Except as provided in paragraph (c), (d), (e), or (f) of this section, self-rescue devices shall be worn or carried at all times by each person when underground.
- (c) Where the wearing or carrying of the self-rescue device is hazardous to the person, it shall be placed in a readily accessible location no greater than 25 feet from such person.
- (d) Where a person works on or around equipment, the self-rescue device may be placed in a readily accessible location on such equipment.

- (e) A mine operator may apply to the District Manager under § 75.1502 for permission to place the SCSR more than 25 feet away.
 - (1) The District Manager shall consider the following factors in deciding whether to permit an operator to place a SCSR more than 25 feet from a miner:
 - (i) Distance from affected sections to surface,
 - (ii) Pitch of seam in affected sections,
 - (iii) Height of coal seam in affected sections,
 - (iv) Location of escapeways,
 - (v) Proposed location of SCSRs,
 - (vi) Type of work performed by affected miners,
 - (vii) Degree of risk to which affected miners are exposed,
 - (viii) Potential for breaking into oxygen-deficient atmospheres,
 - (ix) Type of risk to which affected miners are exposed,
 - (x) Accident history of mine, and
 - (xi) Other matters bearing upon the safety of miners.
 - (2) Such application shall not be approved by the District Manager unless it provides that, while underground, all miners whose SCSR is more than 25 feet away shall have a FSR [filter-type self rescuer] approved by MSHA and NIOSH under 42 CFR part 84

sufficient to enable each miner to get to a SCSR.

- (3) An operator may not obtain permission under paragraph (e) of this section to place SCSRs more than 25 feet away from miners on trips into and out of the mine.

Petitioner has not yet applied to the District Manager for approval of an alternative storage plan. Until such plan has been submitted and the District Manager has formally denied the plan, a petition for modification of this standard is inappropriate. The mine operator must exhaust the administrative provisions for storage plans before seeking to modify the standard.

ORDER

Therefore, pursuant to the authority delegated by the Secretary of Labor to the Administrator for Coal Mine Safety and Health, Orchard Coal Company's Petition for Modification of 30 C.F.R. § 75.1714-2(c) at the Orchard Slope mine is hereby:

DISMISSED.

Any party to this action desiring a hearing on this matter must file in accordance with 30 C.F.R. § 44 within 30 days. The request for hearing must be filed with the Administrator for Coal Mine Safety and Health, 1100 Wilson Boulevard, Arlington, Virginia 22209-3939. If a hearing is requested, the request shall contain a concise summary of position on the issues of fact or law desired to be raised by the party requesting the hearing, including specific objections to the proposed decision. A party other than Petitioner who has requested a hearing shall also comment upon all issues of fact or law presented in the petition, and any party to this action requesting a hearing may indicate a desired hearing site. If no request for a hearing is filed within 30 days after service thereof, the Order of Dismissal will become final.

Stephen J. Gigliotti
Acting Chief, Safety Division for
Coal Mine Safety and Health